Supreme Court, U. S.
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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1976

No. 76-110

Park City Utah Corporation, Petitioner

VS.

E.A. Russell and Martell E. Russell, Respondents.

BRIEF OPPOSING WRIT OF CERTIORARI TO THE UTAH SUPREME COURT

* * * * * *

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BRIEF OPPOSING WRIT OF CERTIORARI

TO THE UTAH SUPREME COURT

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

(a) Opinion Below

Russell v. Park City Utah Corporation, 548 P.2d 889 (Utah, 1976).

(b) Jurisdiction

Petitioner has failed to cite any statute under which the Court may have

jurisdiction. This failure is a ground for dismissal of the Petition for Certiorari under Supreme Court Rule 23(4), See, Supreme Court Rule 23(1)(b)(iii).

(c) Constitutional Provisions Involved

United States Constitution, Amendment 14, §1". . . No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction equal protection of the laws."

(d) Question Presented for Review

Did the Utah Supreme Court deny due process or equal protection of the laws to petitioner?

(e) Statement of the Case

The trial court below entered findings of fact, conclusions of law, and judgment, Appendix at 1, holding a

certain lease to have been terminated and holding certain rights in the nature of an option to purchase real estate were inseparable from the lease and hence also terminated. Thereafter, Petitioner appealed to the Utah Supreme Court which affirmed the judgment of the trial court. In reciting some of the facts of the case in its opinion, the Utah Supreme Court quoted a clause from the lease without supplying some of the changes which had been added in handwriting by the parties to the lease. Petitioner complained of this misquotation in its petition for rehearing before the Utah Supreme Court which was denied. Petitioner now contends that the Utah Supreme Court deliberately falsified the record by its misquotation of the Exhibit involved and that the misquotation in the opinion denied Petitioner due process or equal protection.

(f) Argument

I THERE IS NO BASIS OTHER THAN THE CONCLUSORY ALLEGATIONS OF THE PETITION FOR PETITIONER'S CLAIM THAT THE UTAH SUPREME COURT IS GUILTY OF MISCONDUCT.

The petition for certiorari contains some rather strong charges of misbehavior on the part of the Utah Supreme Court, which allegedly "fabricated its own evidence and then invented a non-existent false controversy. . . . On such fictional basis said Court applied the law against your petitioner . . . ." Petition at 2. There is no showing that the Utah court deliberately misquoted the exhibit in question, that it was motivated by any *improper considerations to the prejudice* or injury of petitioner, that the difference in language was material or that petitioner was in anyway prejudiced or injured by the misquotations. Petitioner has not formally objected to any member

of the court by means of affidavit of prejudice. See, Utah Const., Article VIII, §13; Utah Code Ann. §78-7-1 (1953); See, Haslam v. Morrison, 113 Utah 14, 190 P.2d 520 (1948).

The charge that the Utah court's denial of a rehearing shows prejudice is without any foundation of fact. Utah Rules of Civil Procedure 76(e), governing rehearings, does not require an answer brief to the petition for rehearing. Petitioner does not show any discrimination against it by the court below in its ruling.

The trial court heard petitioner's claims about the lease and received Exhibit 11, into evidence, complete with all the handwritten changes. Based on a full and complete hearing, the trial court held that the option created by the paragraph in question had been

terminated with the rest of the lease of which it was a part. On appeal, the Utah Supreme Court affirmed the finding involved. The opinion is clear as to the decision reached by the Utah Supreme Court. A negotiation appearing in the opinion would not justify a review by this Court of the basis of the decision of the Supreme Court of the State of Utah, particularly where the Court itself did not consider the printing error to be sufficient formally to correct the quoted language.

As a consequence of this lack of support for the allegations of misconduct of the Utah court, it appears that the claims of petitioner are overstated. There is no basis for Petitioners cavalier assertion that the Court "fabricated its own evidence and then invented a non-existent false controversy". A reading of the Utah Supreme Court's decision makes it abundantly clear that such decision was not based on

any fabrication of evidence. The decision sustains a finding of the trial court which in turn was based on conflicting evidence. In such a situation, all the court needs do is affirm on the basis of Utah Rules of Civil Procedure Rule 72(a), (Review limited to questions of law) and Rule 61 (harmless error).

II IF THE PETITION FOR CERTIORARI IS TO BE INTERPRETED AS CHARGING NOT DELIBERATE MISCONDUCT OF THE UTAH SUPREME COURT BUT MERELY THAT THE UTAH COURT, ACTING IN GOOD FAITH BUT MISTAKENLY, MISQUOTED AN EXHIBIT IN ITS OPINION, THERE IS NO FEDERAL QUESTIONS PRESENTED.

In any event, misquoting an exhibit does not constitute a denial of due process. The Fourteenth Amendment to the United States Constitution does not assure immunity against judicial error. Worcester County Trust Co. v. Riley, 302 U.S. 298, 299 (1937); Jones v. Buffalo Creek Coal and Coke Co., 245 U.S. 328, 329 (1917); Milwaukee Electric Railway and Light Co. v. Wisconsin ex rel. City of Milwaukee, 252 U.S. 100, 106 (1920); Central Land Co. v. Laidley

Rees v. City of Watertown, 86 U.S. (19 Wall.) 107 (1874) do nothing to establish a federal question in the contentions presented by the petition. The Endicott Johnson case involved the constitutionality of a New York post-judgment garnishment statute against an attack by a garnishee, in which this court made some general remarks about due process, as requiring "a course of legal proceedings according to those rules and principles which have been established in our system of jurisprudence for the protection and enforcement of private rights." 266 U.S. 285, 288 (1924). Petitioner has pointed to no denial of notice, opportunity for hearing, or considered decision in the proceedings below, nor to any other rules or principles of jurisprudence which were violated by the proceedings below on a constitutional scale. The City of Watertown case involved a dispute over the power of the court to

impose a tax by court order, or collect a municipal obligation by means of execution against the municipal citizens' personal assets. The strictures of due process figured in the court's reasoning as it held that the court could neither impose a tax nor issue the requested execution, in part because mandamus was a complete legal remedy and in part because execution against personal assets of the citizens would deny affected persons a hearing. In the case below, there is no contention that the Utah court denied anyone a fair hearing, or improperly created a remedy where the legal remedy was complete.

(g) Conclusion

In complaining of a misquotation from an exhibit, petitioner exhibits pique at having lost below but fails to show a federal question not previously passed on by this Court or with respect to which the decision below is probably not in accord

with the previous decisions of this Court, as required by Supreme Court Rule 19. Certain allegations of misconduct by the Utah court offered by Petitioner lack foundation in the record and indeed lack credibility and should not trouble this Court. The petition for writ of certiorari should be denied.

Respectfully submitted,

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Respondent's Attorney
NIELSEN, HENRIOD,
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Salt Lake City, Utah 84111

CERTIFICATE OF SERVICE BY MAIL

The undersigned member of the Bar of the Supreme Court of the United States and counsel of record for respondents herein, hereby certifies that the petitioner was served with three copies of the foregoing petition, whereby the same were deposited in the United States Post Office, Salt Lake City, Utah, with first class postage prepaid, properly addressed to petitioner's counsel of record as shown upon the cover hereof, there being no other parties to be served herein, on this 6 day of August, 1976.

ARTHUR H. NIELSEN
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APPENDIX

IN THE DISTRICT COURT OF SUMMIT COUNTY

STATE OF UTAH

E. A. RUSSELL and MARTELL E. RUSSELL, Plaintiffs, v. PARK CITY UTAH CORPORATION, et al, Defendants.	FINDINGS OF FACT AND CONCLUSIONS OF LAW Case No. 4194

The within action came on for trial before the Honorable Allen B. Sorensen, Judge of the above entitled Court, on December 12, 1974, in Provo, Utah. Plaintiffs were represented by Arthur H. Nielsen and Bruce Findlay and Plaintiff E. A. Russell was personally present during the hearing. The Defendant corporation was represented by Don R. Strong. Evidence, both testimonial and documentary, was

introduced and opportunity was given counsel to file written memoranda of their legal arguments. Based on the evidence and arguments, the Court makes and enters the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Defendant Park City Utah Corporation is a corporation organized and existing under and by virtue of the laws of the State of Utah.

2. On or about March 31, 1967, Plaintiffs executed with the Defendant Major-Blakeney Corporation a certain lease agreement covering certain property situate in the counties of Summit and Salt Lake, State of Utah, consisting of approximately 2,000 acres and more particularly described as follows:

Township 1 South, Range 3 East, Salt Lake Base & Meridian.

The East half (E 1/2) of Section 22; and

The West half of the Northwest quarter (W 1/2 NW 1/4), the South west quarter (SW 1/4), the West half of the Southeast quarter (W 1/2 SE 1/4), the Southeast quarter of Southeast quarter (SE 1/4 SE 1/4) of Section 26; and

The Southeast quarter (SE 1/4) of Section 27; and

All of Section 35; and

The East half (E 1/2) of Section 34; and

The West half of the Southwest quarter (W 1/2 SW 1/4), the Southeast quarter of the Southwest quarter (SE 1/4 SW 1/4) of Section 36; and

Beginning at a point N89° 47' E 2543.22 feet from the West quarter corner of Section 27, T. 1 S., R 3 E., SLM, Utah, thence running South 4568.66 feet, South 43° 15' West 328.70 feet; North 49° 51' West 659.34 feet; North 88°11' West 1162.26 feet; North 75°48' West 289.74 feet; South 79° 47' West 374.88 feet, South 948.1 feet, more or less, to the West quarter corner of Section 34, T. 1 S., R. 3 E., SLM, Utah, East 2640 feet, more or less, to the center of said Section 34; thence North 5280 feet, more or less, to the center of Section 27, T. 1 S., R. 3 E., SLM, Utah; thence South 89° 47' West 96.78 feet, more or less, to the point of beginning (containing 62.07 acres, more or less)

Containing a total of 1,982.07 acres, more or less.

3. Thereafter, on or about June 26, 1968, the Defendant Major-Blakeney Corporation assigned and transferred to Defendant Park City Utah Corporation all interest which the said Major-Blakeney Corporation had in and to said lease and purchase agreement. Said assignment provided that thereafter all notices which would have previously been directed to The Major-Blakeney Corporation be directed to Park at the following address: 1610 Walker Bank Building, Salt Lake City, Utah.

4. Under and pursuant to the provisions of the lease and purchase agreement, Defendants were required to pay to the Plaintiffs the sum of $2.50 per acre for the acreage leased, making total payment of $4,855.20 payable on or before the first day of November of each year.

5. Defendants failed and refused to pay the annual rental due and owing on November 1, 1970, for the period March 1, 1970, through February 28, 1971, in the

amount of $4,855.20; and Plaintiffs thereafter made repeated demands on Defendants to pay, which demands were ignored.

6. Finally, on March 11, 1971, Plaintiffs sent written notice to Defendants at 1610 Walker Bank Building, Salt Lake City, Utah, to the effect that unless said rent was paid on or before 45 days from receipt of said notice, the lease would be considered to be terminated and cancelled. The notice further provided that the lessors claimed liquidated damages of $2,500.00, pursuant to the provisions of the lease agreement.

7. The notice described in the preceding paragraph was received at the address designated on March 12, 1971, by Lala Gallegos, an employee of William Richards, then attorney for Defendants. Lala Gallegos was authorized to receive notices for Defendants; and said notice was properly given as required by said

lease and assignment.

8. Notwithstanding the notice of Defendants, Defendants did not pay the rent during the 45-day grace period provided by the contract, nor did Defendants pay or offer to pay any rent within six weeks after the expiration of the 45-day grace period.

9. Defendants finally, on June 7, 1971, sent a letter through their attorney tendering the sum of $4,855.18 for the rent. Said tender was insufficient in amount and beyond a reasonable time from the end of said grace period of 45 days.

10. Defendants did not have any valid reason or excuse for not paying the rent when the same became due, nor was there any justifiable reason for not making said rental payment within the 45-day period between March 12 and April 26, 1971.

11. No rental payment was ever received by the Plaintiffs for the lease

year running from March 1, 1970, to February 28, 1971. Under their contract with Defendants, Plaintiffs were entitled to $4,855.20 as lease rental for that period. Plaintiff diligently sought to collect the rent payment when due without success, and the cancellation and termination of the lease was properly effected.

12. Said lease agreement further provided that lessee had an option to purchase said property during the term of said lease. There was no separate consideration paid for this option of purchase, and said option was an integral part of the lease and not severable from it so that the cancellation and termination of said lease terminated and cancelled said option to purchase.

13. Plaintiffs did not waive the prompt payment of the rental payment and did not permit the rental payment to be made annually in the spring of the year

following the November 1 date on which the said rent was due as alleged in Defendants' answer and counterclaim. Also, Plaintiffs' refusal of the tender of rent on June 7, 1971, was not in contravention of the terms of the lease between the parties.

14. With respect to the second cause of action set forth in said counterclaim, the Defendants alleged that after filing the within action, Plaintiffs had leased the property which formed the subject matter of the dispute to Life Resources, Inc., a California corporation which substantially owns Ski Park City West, Inc., the assignee of the rights and obligations of Robert W. Ensign. Said Robert W. Ensign had allegedly been the sublessee of Defendants as to the property forming the subject matter of the dispute prior to cancellation of Defendants' lease. The Defendants did not, however, make Life Resources or Ski Park City West, Inc., or

other corporations allegedly involved, parties to the within lawsuit and failed to present proof supporting any claim under the second cause of action of their amended counterclaim.

15. The lease involved did not contain any privileges in favor of the lessees which were severable from the lease itself; and the termination of the lease by Plaintiffs terminated all rights of the Defendants in and to the property.

16. Plaintiffs have failed to prove that they are entitled to recover liquidated damages as provided in said lease.

From the foregoing Findings of Fact, the Court concludes as follows:

CONCLUSIONS OF LAW

1. The lease was properly terminated by Plaintiffs.

2. Plaintiffs are entitled to a judgment adjudging said lease and the option to purchase therein contained to

be of no further force or effect with respect to the following described property:

Township 1 South, Range 3 East, Salt Lake Base & Meridian.

The East half (E 1/2) of Section 22; and

The West half of the Northwest quarter (W 1/2 NW 1/4), the Southwest quarter (SW 1/4), the West half of the Southeast quarter (W 1/2 SE 1/4), the Southeast quarter of Southeast quarter (SE 1/4 SE 1/4) of Section 26; and

The Southeast quarter (SE 1/4) of Section 27; and

All of Section 35; and

The East half (E 1/2) of Section 34; and

The West half of the Southwest quarter (W 1/2 SW 1/4), the Southeast quarter of the Southwest quarter (SE 1/4 SE 1/4) of Section 36; and

Beginning at a point N89° 74' E 2543.22 feet from the West quarter corner of Section 27, T. 1 S., R 3 E., SLM, Utah, thence running South 4568.66 feet, South 43° 15' West 328.70 feet; North 49°51' West 659.34 feet; North 88°11' West 1162.26 feet; North 75°48' West 289.74 feet; South 79° 47' West 374.88 feet, South 948.1 feet, more or less, to the

West quarter corner of Section 34, T. 1 S., R. 3 E., SLM, Utah, East 2640 feet, more or less, to the center of Section 27, T. 1 S., R. 3 E., SLM, Utah; thence South 89° 47' West 96.78 feet, more or less, to the point of beginning (containing 62.07 acres, more or less)

Containing a total of 1,982.07 acres, more or less.

3. Said judgment should not provide for the recovery of liquidated damages by Plaintiffs.

4. Plaintiffs are entitled to judgment on Defendants' counterclaim; and said counterclaim should be dismissed with prejudice.

DATED this 28th day of April, 1975.

BY THE COURT:

/S/ Allen B. Sorensen
JUDGE

IN THE DISTRICT COURT OF SUMMIT COUNTY

STATE OF UTAH

E. A. RUSSELL and MARTELL E. RUSSELL,	)	
Plaintiffs,	)	JUDGMENT
v.	)	
PARK CITY UTAH CORPORATION, et al,	)	Case No. 4194
Defendants.	)	

The above entitled action having been tried before the Court on December 12, 1974, and the Court having made and entered its Findings of Fact and Conclusions of Law,

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That certain Lease and Purchase Agreement dated March 31, 1967, wherein E. A. Russell and Martell E. Russell, Plaintiffs, appear as lessors and Major-Blakeney Corporation appears as lessee, has been and is hereby terminated, cancelled and of no further force or effect.

2. Plaintiffs are the owners of, in possession of and entitled to the possession of the following described real property located in the Counties of Summit and Salt Lake, State of Utah, free and clear of all claims and/or liens of the Defendants, and each of them, or any person or persons claiming by, through or under them, and particularly free and clear of any claims arising out of or through that certain Lease and Purchase Agreement dated March 31, 1967, wherein Plaintiffs appear as lessors and Defendant Major-Blakeney Corporation appears as lessee:

Township 1 South, Range 3 East, Salt Lake Base & Meridian.

The East half (E 1/2) of Section 22; and

The West half of the Northwest quarter (W 1/2 NW 1/4), the Southwest quarter (SW 1/4), the West half of the Southeast quarter (W 1/2 SE 1/4), the Southeast quarter of Southeast quarter (SE 1/4 SE 1/4) of Section 26; and

The Southeast quarter (SE 1/4) of Section 27; and

All of Section 35; and

The East half (E 1/2) of Section 34; and

The West half of the Southwest quarter (W 1/2 SW 1/4), the Southeast quarter of the Southwest quarter (SE 1/4 SW 1/4) of Section 36; and

Beginning at a point N89° 47' E 2543.22 feet from the West quarter corner of Section 27, T. 1 S., R 3 E., SLM, Utah, thence running South 4568.66 feet, South 43° 15' West 328.70 feet; North 49° 51' West 659.34 feet; North 88° 11' West 1162.26 feet; North 75°48' West 289.74 feet; South 79°47' West 374.88 feet, South 948.1 feet, more or less, to the West quarter corner of Section 34, T. 1 S., R. 3 E., SLM, Utah, East 2640 feet, more or less, to the center of said Section 34; thence North 5280 feet, more or less, to the center of Section 27, T. 1 S., R. 3 E., SLM, Utah; thence South 89°47' West 96.78 feet, more or less, to the point of beginning (containing 62.07 acres, more or less)

Containing a total of 1,982.07 acres, more or less.

3. Defendants' counterclaim be and the same is hereby dismissed with prejudice.

DATED this 28th day of April, 1975.

/S/ Allen B. Sorensen
JUDGE